

CHAPTER 23
APPOINTMENT OF GUARDIAN AD LITEM AND COUNSEL

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	PROCEDURE	AUTHORITY
	APPOINTMENT OF GUARDIAN AD LITEM – CHIPS, TPR, AND OTHER PERMANENCY MATTERS	
23.01	<p>APPOINTMENT OF GUARDIAN AD LITEM FOR CHILD</p> <p>A. MANDATORY APPOINTMENT GENERALLY REQUIRED. The court shall appoint a guardian ad litem to protect the interests of the minor in every proceeding alleging a child's need for protection or services [see definition in Chapter 31.0], except proceedings where the sole allegation is that the child is a <u>runaway</u> or habitual <u>truant</u>.</p> <p><i>Comment: Minn. Stat. § 260C.163, subd. 5, and RJPP 26.01 comply with the federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. § 5106a(b)(2)(A). CAPTA mandates that for a state to qualify to receive federal grants for child protection prevention and treatment services, the state must have in place:</i></p> <p><i>[P]rovisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate (or both), shall be appointed to represent the child in such proceedings –</i></p> <p><i>(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and</i></p> <p><i>(II) to make recommendations to the court concerning the best interests of the child</i></p> <p><i>42 U.S.C. § 5106a(b)(2)(A)(xiii) (2002).</i></p> <p><i>The types of cases to which a guardian ad litem must be appointed are more expansive under Minnesota's statutes than under federal statutes. Minnesota requires the appointment of a guardian ad litem not only in cases where the act of an adult places the child in need of protection or services, but also in some cases where the child's act or status places the child in need of protection or services, such as if the child is a delinquent under age 10 or is engaged in prostitution.</i></p> <p>B. DISCRETIONARY APPOINTMENT. In any other case not described in section "A" above, the court may appoint a guardian ad litem to protect the best interests of the child when the court feels that such appointment is desirable, including in cases where the child is alleged to be a <u>runaway</u> or habitual <u>truant</u>.</p>	<ul style="list-style-type: none"> • Minn. Stat. § 260C.163, subd. 5(a) • See RJPP 26.01, subd. 1 • <i>In Re Matter of Welfare of Solomon</i>, 291 N.W.2d 364 (Minn. 1980) (guardian ad litem has standing as a party with duty to protect the interest of the child) • <i>In Re Matter of Welfare of J.S.</i>, 470 N.W.2d 697, (Minn. Ct. App. 1991), <i>rev. denied</i> <p>Minn. Stat. § 260C.163, subd. 5</p> <ul style="list-style-type: none"> • Minn. Stat. § 260C.163, subd. 5(a) • See RJPP 26.01, subd. 2

	PROCEDURE	AUTHORITY
	<p>23.01 Appointment of Guardian Ad Litem for Child – CHIPS, TPR, and Other Permanency Matters (continued)</p> <p>C. TIMING; METHOD OF APPOINTMENT. Appointment of a guardian ad litem shall occur prior to the Emergency Protective Care (EPC) Hearing [see Chapter 8] or the Admit-Deny Hearing [see Chapter 9], whichever occurs first. The court may appoint a person to serve as guardian ad litem for more than one child in a proceeding. The appointment of a guardian ad litem shall be made pursuant to Rules of Guardian Ad Litem Procedure.</p> <p>D. GUARDIAN AD LITEM NOT ALSO ATTORNEY FOR CHILD. Counsel for the child shall not serve as the child's guardian ad litem or as legal counsel for the guardian ad litem.</p> <p>E. RESPONSIBILITIES; RIGHTS. The guardian ad litem shall carry out the responsibilities, and have the rights and powers, set forth in the Rules of Guardian Ad Litem Procedure.</p>	<p>RJPP 26.01, subd. 3</p> <ul style="list-style-type: none"> • RJPP 26.01, subd. 5 • Minn. Stat. § 260C.163, subd. 3(d), 5(a) • RJPP 26.01, subd. 4 • Minn. Stat. § 260C.163, subd. 5 (b) • <i>Tindell v. Rogosheske</i>, 421 N.W.2d 340 (Minn. Ct. App. 1988), <i>aff'd</i>, 428 N.W.2d 386 (Minn. 1988) (guardian ad litem is entitled to immunity when acting within the scope of the guardian ad litem responsibilities)
23.02	<p>APPOINTMENT OF GUARDIAN AD LITEM FOR CHILD'S PARENT OR LEGAL CUSTODIAN</p> <p>A. APPOINTMENT. The court may sua sponte, or upon the written or on-the-record request of a party or participant, appoint a guardian ad litem for a parent who is a party or the legal custodian if the court determines that the parent or legal custodian:</p> <ol style="list-style-type: none"> 1. Is incompetent to assist counsel in the matter or understand the nature of the proceedings; or 	<ul style="list-style-type: none"> • RJPP 26.02 • Minn. Stat. 260C.163, subd. 5(a) • <i>Lasiter v. Dept. of Social Services</i>, 452 U.S. 18 (1981) (Constitution does not require appointment of

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	<p>23.02 Appointment of Guardian Ad Litem for Child's Parent or Legal Custodian (continued)</p> <p>2. It appears at any stage of the proceedings that the parent is under eighteen (18) years of age and is without a parent or legal custodian, or that considered in the context of the matter the minor parent's parent or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the interests of the minor parent.</p> <p>B. COUNSEL FOR PARENT NOT DISCHARGED. Appointment of a guardian ad litem for a parent shall not result in discharge of counsel for the parent.</p>	<p>counsel for indigent parents in every termination of parental rights proceeding, but due process may require appointment)</p> <p>RJPP 26.02</p>
23.03	<p>TERM OF SERVICE OF GUARDIAN AD LITEM</p> <p>Unless otherwise ordered by the court, upon appointment to a juvenile protection matter [see definition in Chapter 3.33] the guardian ad litem shall serve as follows:</p> <ol style="list-style-type: none"> 1. Reunification: When the permanency plan for the child is to return the child home, the court shall issue an order dismissing the guardian ad litem from the case upon issuance of an order returning the child to the child's home and terminating the juvenile protection matter. 2. Transfer of Permanent Legal and Physical Custody: When the permanency plan for the child is transfer of permanent legal and physical custody to a relative, the court shall issue an order dismissing the guardian ad litem from the case upon issuance of the order transferring custody and terminating the juvenile protection matter. 3. Termination of Parental Rights: When the permanency plan for the child is termination of parental rights leading to adoption, the guardian ad litem shall continue to serve as a party until the adoption decree is entered. 4. Long Term Foster Care: When the permanency plan for the child is long-term foster care, the guardian ad litem shall continue to serve as a party for the purpose of monitoring the child's welfare, and shall provide the foster parent and child, if of suitable age, with the address and phone number of the guardian ad litem so that they may contact the guardian ad litem if necessary. The guardian ad litem shall be provided notice of all social services administrative reviews and shall be consulted regarding development of any Independent Living Plan [see definition in Chapter 3.27] required pursuant to RJPP 37. 	<p>RJPP 26.03</p>

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23.04	<p>GAL REQUESTS COUNSEL FOR CHILD</p> <p>The guardian ad litem shall request appointment of counsel for a child if the guardian ad litem determines that the appointment is necessary to protect the legal rights or legal interests of the child.</p> <p><i>Comment: In deciding whether to request appointment of counsel for the child, the guardian ad litem should assess the following, among other factors: the child's ability to work with counsel, whether the guardian ad litem's recommendation is contrary to the child's expressed preference, whether the child's siblings are represented, and the complexity of the issues involved.</i></p>	<p>RJPP 26.04</p> <p>RJPP 26.04, Comment</p>
23.05	<p>REIMBURSEMENT</p> <p>The court may inquire into the ability of the parent or legal custodian to pay for the guardian ad litem's services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay the guardian ad litem's fees.</p>	<ul style="list-style-type: none"> • RJPP 26.05 • Minn. Stat. § 260C.331, subd. 6
	APPOINTMENT OF GUARDIAN AD LITEM – ADOPTION MATTER	
23.06	<p>APPOINTMENT OF GUARDIAN AD LITEM FOR CHILD</p> <p>A. MANDATORY APPOINTMENT. A guardian ad litem appointed to serve in a juvenile protection matter [see definition in Chapter 3.33], shall continue to serve in the adoption matter following a termination of parental rights or transfer of guardianship to the Commissioner of Human Services.</p> <p>B. DISCRETIONARY APPOINTMENT. In any other adoption matter not described in section “A” above, the court may appoint a guardian ad litem.</p> <p>C. TERM OF SERVICE. The guardian ad litem shall advocate for the best interests of the child and shall continue to serve until the adoption decree is entered pursuant to RJPP 43.</p> <p>D. GUARDIAN AD LITEM NOT ALSO ATTORNEY FOR CHILD. Counsel for the child shall not also serve as the child's guardian ad litem or as legal counsel for the guardian ad litem.</p>	<p>Minn. R. Adopt. P. 24.01, subd. 1</p> <p>Minn. R. Adopt. P. 24.01, subd. 1</p> <p>Minn. R. Adopt. P. 24.01, subd. 1</p> <p>Minn. R. Adopt. P. 24.01, subd. 2</p>

	PROCEDURE	AUTHORITY
	<p>23.06 Appointment of Guardian Ad Litem for Child – Adoption Matter (continued)</p> <p><i>Comment: RAP 24.01, subd. 1, reflects the clear legislative mandate that the guardian ad litem in a juvenile protection matter [see definition in Chapter 3.33] shall continue to serve until the adoption decree is entered. See Minn. Stat. § 260C.317, subd. 3(b), and RJPP 26.03. It is preferable that the same individual serve continuously as the child's guardian ad litem for both the juvenile protection matter and the adoption matter. However, if that is not practicable, the guardian ad litem program shall assign another individual to serve as the child's guardian ad litem in the adoption matter following the termination of parental rights in the juvenile protection matter. Upon the assignment of a the guardian ad litem in an adoption matter, the court shall issue a new appointment order.</i></p>	Minn. R. Adopt. P. 24.01, Committee Comment
23.07	<p>RESPONSIBILITIES</p> <p>In an adoption matter, the guardian ad litem shall carry out the responsibilities, and have the rights and powers, set forth in the Minnesota Rules of Guardian Ad Litem Procedure.</p>	RAP 24.02
	APPOINTMENT OF COUNSEL	
23.08	<p>RIGHT TO REPRESENTATION</p> <p>Every party and participant has the right to be represented by counsel in every juvenile protection matter, including through appeal, if any. This right attaches no later than when the party or participant first appears in court.</p> <p><i>Comment: RJPP 25.01 sets forth the basic principle that each person appearing in court has the right to be represented by counsel. Each person, however, does not necessarily have the right to court appointed counsel as provided in RJPP 25.02.</i></p>	<p>RJPP 25.01</p> <p>RJPP 25.01, Committee Comment</p>
23.09	<p>APPOINTMENT OF COUNSEL FOR CHILD</p> <p>A. RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. Each child has the right to effective assistance of counsel in connection with a juvenile protection matter.</p> <p><i>Comment: RJPP 25.02 sets forth the basic principle that the child has the right to be represented by counsel. Each child, however, does not necessarily have the right to court appointed counsel as provided in RJPP 25.02.</i></p>	<ul style="list-style-type: none"> • RJPP 25.02, subd. 1 • Minn. Stat. § 260C.163, subd. 3(a) <p>RJPP 25.02, Committee Comment</p>

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	<p>23.09 Appointment of Counsel for Child (continued)</p> <p>B. JUVENILE PROTECTION MATTERS. Except in proceedings where the sole basis for the petition is habitual <u>truancy</u>, if the child desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the child who is ten (10) years of age or older and may appoint counsel to represent a child under age ten (10) in any case in which the court determines that such appointment is appropriate.</p> <p>C. TRUANCY MATTERS. In any proceeding where the sole basis for the petition is habitual <u>truancy</u>, the child does not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court must appoint a public defender or other counsel at public expense to represent the child.</p> <p>D. INDIAN CHILD. In any juvenile protection matter involving an <u>Indian</u> child, the court may, in its discretion, appoint counsel for an <u>Indian</u> child upon a finding that such appointment is in the best interests of the child.</p> <p>E. COUNSEL NOT GUARDIAN AD LITEM FOR CHILD. Counsel for the child shall not serve as the child's guardian ad litem or as legal counsel for the guardian ad litem.</p> <p>E. REQUEST; TIMING. The court may sua sponte appoint counsel for the child, or may do so upon the request of any party or participant. Any such appointment of counsel for the child shall occur as soon as practicable after the request is made.</p>	<ul style="list-style-type: none"> • RJPP 25.02, subd. 1(a) • Minn. Stat. § 260C.163, subd. 3(b) <ul style="list-style-type: none"> • RJPP 25.02, subd. 1(b) • Minn. Stat. § 260C.163, subd. 3(c) <ul style="list-style-type: none"> • RJPP 25.02, subd. 1(c) • 25 U.S.C. § 1912(b) <ul style="list-style-type: none"> • RJPP 25.02, subd. 1 • Minn. Stat. § 260C.163, subd. 3(d) <p>RJPP 25.02, subd. 1(d)</p>
23.10	<p>APPOINTMENT OF COUNSEL FOR PARENT OR LEGAL CUSTODIAN</p> <p>A. RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. Each parent or legal custodian has the right to effective assistance of counsel in connection with a juvenile court proceeding.</p>	<ul style="list-style-type: none"> • RJPP 25.02, subd. 2 • Minn. Stat. § 260C.163, subd. 3(a)

	PROCEDURE	AUTHORITY
	<p>23.10 Appointment of Counsel for Parent or Legal Custodian (continued)</p> <p>B. JUVENILE PROTECTION MATTERS. Except in proceedings where the sole basis for the petition is habitual <u>truancy</u>, if the child's parent or legal custodian desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the parent or legal custodian in any juvenile protection matter in which the court determines that such appointment is appropriate.</p> <p>C. TRUANCY MATTERS. In any proceeding where the sole basis for the petition is habitual <u>truancy</u>, the parent or legal custodian does not have the right to appointment of a public defender or other counsel at public expense.</p> <p>D. INDIAN CUSTODIAN. In any juvenile protection matter involving an <u>Indian</u> child, if the child's parent or <u>Indian</u> custodian is unable to afford it, the court shall appoint counsel to represent the parent or <u>Indian</u> custodian.</p> <p>E. TIMING. The appointment of counsel for the parent, legal custodian, or <u>Indian</u> custodian shall occur as soon as practicable after the request is made.</p>	<ul style="list-style-type: none"> • RJPP 25.02, subd. 2(a) • Minn. Stat. § 260C.163, subd. 3(b) <ul style="list-style-type: none"> • RJPP 25.02, subd. 2(b) • Minn. Stat. § 260C.163, subd. 3(c) <ul style="list-style-type: none"> • RJPP 25.02, subd. 2(c) • 25 U.S.C. § 1912(b) <p>RJPP 25.02, subd. 2(d)</p>
23.11	<p>APPOINTMENT OF COUNSEL FOR GUARDIAN AD LITEM</p> <p>The court may appoint separate counsel for the guardian ad litem if necessary. A public defender may not be appointed as counsel for a guardian ad litem.</p>	<ul style="list-style-type: none"> • RJPP 25.02, subd. 3 • Minn. Stat. § 260C.163, subd. 5
23.12	<p>CHILD'S PREFERENCE</p> <p>In any juvenile protection matter where the child is not represented by counsel, the court shall determine the child's preferences regarding the proceedings, if the child is of suitable age to express a preference.</p>	<ul style="list-style-type: none"> • RJPP 25.02, subd. 4 • Minn. Stat. § 260C.163, subd. 3(e)
23.13	<p>REIMBURSEMENT</p> <p>When counsel is appointed for a child or a child's parent or legal custodian, the court shall inquire into the ability of the parent or legal custodian to pay for the attorney's services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay the attorney's fees.</p> <p><i>Comment: In cases where counsel is appointed for the child, Minn. Stat. § 260C.163, subd. 5, authorizes the court to order the parent or legal custodian to pay such fees if the parent is</i></p>	<ul style="list-style-type: none"> • Minn. Stat. § 260C.331, subd. 5 • See RJPP 25.03

	PROCEDURE	AUTHORITY
	23.13 Reimbursement (continued) <i>financially able to do so. RJPP 25.03 expands that concept to authorize the court to also require the parent or legal custodian to pay the fees for any counsel appointed for such parent or legal custodian.</i>	
23.14	NOTICE OF RIGHT TO REPRESENTATION Any child, parent, or legal custodian who appears in court and is not represented by counsel shall be advised by the court on the record of the right to representation pursuant to RJPP 25.	RJPP 25.04
23.15	CERTIFICATE OF REPRESENTATION An attorney representing a client in a juvenile protection matter [see definition in Chapter 3.33], other than a public defender or county attorney, shall on or before the attorney's first appearance file with the court a certificate of representation.	RJPP 25.05
23.16	WITHDRAWAL OF COUNSEL An attorney representing a party in a juvenile protection matter [see definition in Chapter 3.33], including a public defender, shall continue representation until such time as: <ol style="list-style-type: none"> 1. all proceedings in the matter have been completed; 2. the attorney has been discharged by the client in writing or on the record; 3. the court grants the attorney's ex parte motion for withdrawal; or 4. the court approves the attorney's ex parte written substitution of counsel. <p>If the court grants an attorney's ex parte motion for withdrawal, the withdrawing attorney shall serve upon all parties and the county attorney a copy of the order permitting withdrawal.</p>	RJPP 25.06